



Ninety-Eighth Legislature - Second Session - 2004
Committee Statement
LB 710

Hearing Date: February 12, 2003
Committee On: Health and Human Services

Introducer(s): (Jensen)
Title: Revise the Nebraska Mental Health Commitment Act

Roll Call Vote – Final Committee Action:

Advanced to General File
X Advanced to General File with Amendments
Indefinitely Postponed

Vote Results:

6	Yes	Senator Jensen, Byars, Cunningham, Erdman, Stuthman and Johnson
	No	
	Present, not voting	
1	Absent	Senator Maxwell

Proponents:

Senator Jensen
Dr. Susan Boust

Representing:

Introducer
Nebraska Medical Association & Nebraska Psychiatric Society

Opponents:

George Hannigan
Eric Evans
Marsha Merrill
Anita Childerston
Beth Baxter
Brenda Beadle

Representing:

Nebraska Health and Human Services System
Nebraska Advocacy Center, Inc.
Self
Lincoln County Clerk of the District Court
Region III
Douglas County Attorney's Office & Nebraska County Attorney's Association
Sarpy County Attorney's Office
Nebraska Association of County Officials
Self

Neutral:

Mary Hepburn O'Shea
Dr. Jerry Denton

Representing:

Self
NAMI

Summary of purpose and/or changes: The bill is a partial recodification of the Nebraska Mental Health Commitment Act. The bill adds new definitions and revises existing definitions in the act.

The bill changes membership on county mental health boards and reduces the number of such boards to one in each judicial district. It changes the membership of such boards to include one psychiatrist or psychologist, an attorney, and a third member who is or has been a recipient of treatment for mental illness or a close relative of such person. If a psychiatrist or psychologist is unavailable, the court may appoint a licensed mental health practitioner, psychiatric social worker, psychiatric nurse, or clinical social worker. The attorney is the chairperson of the board.

The bill permits a licensed psychiatrist or psychologist to admit a person for emergency protective custody and evaluation if he or she believes that a person is mentally ill and dangerous.

The bill requires a law enforcement officer or mental health professional who admits a person for emergency protective custody and evaluation to execute an affidavit containing an allegation of his or her belief that the person is mentally ill and dangerous and a summary of the person's behavior supporting such allegation, which is immediately forwarded to the county attorney. Within thirty-six hours after admission, the person must be evaluated by a mental health professional (psychiatrist or psychologist).

If the examining mental health professional determines that the person is not mentally ill and dangerous, such person must be released. If the examining mental health professional determines that the person is mentally ill and dangerous, the professional must file a certificate of such determination with the court. The filing of certificate containing a false material statement of false information is a Class I misdemeanor.

Any person who believes that another person is mentally ill and dangerous may communicate such belief to the county attorney. The filing of an affidavit by a law enforcement officer or mental health professional upon the admission of a person for emergency protective custody and evaluation is sufficient to communicate such belief. If the county attorney concurs with such belief, he or she must file a petition for assisted treatment with the district court.

The petition for assisted treatment may contain a request for the emergency protective custody and evaluation of the person prior to the assisted treatment hearing before the mental health board. No later than ten calendar days after the filing of such petition, the court is required to schedule a hearing of the mental health board on the petition. The bill requires the court to provide notice of such hearing.

The mental health board is required to conduct a hearing to determine if there is clear and convincing proof that the subject of the petition is mentally ill and dangerous. The hearing is open to anyone unless the respondent requests that it be closed. The mental health board may approve the motion of any person to attend the hearing upon a showing that the person has a substantial interest in the proceeding. The board may also approve the motion of a family member of the respondent to participate in the hearing upon a showing that he or she has a substantial interest in the proceeding. Upon such approval, the family member has the right to representation by counsel at his or her own expense, and he or she may present evidence, cross-examine witnesses, and appeal.

At the conclusion of arguments of the parties at the assisted treatment hearing, the mental health board must (1) dismiss the petition and order the unconditional release of the respondent, (2) order the respondent to receive assisted outpatient treatment, (3) order the respondent to receive assisted inpatient treatment, or (4) order a continuance of the proceedings for a period of no longer than 90 days from the entry of the order.

At the assisted treatment hearing, the petitioner (county attorney) and the respondent may jointly offer a proposed order for assisted treatment for adoption by the mental health board. At its discretion, the mental health board may enter the proposed order without a full hearing.

The bill revises and recodifies other sections of the act and outright repeals several sections.

Explanation of amendments, if any: The committee amendment (AM 2161) replaces the bill as introduced:

1. It recodifies provisions of the Nebraska Mental Health Commitment Act and outright repeals various sections of the act. The recodified ordering of sections in the amendment is based primarily on revisions made in LB 770 (2001).
2. It adds new definitions for “mental illness” (page 3) and “substance dependence” (page 5).
3. It provides that members and alternate members of a mental health board (MHB) may be removed at the discretion of the presiding judge of the district court judicial district, and provides MHB members and alternate members with the same immunity as judges of the district court. (page 6)
4. It clarifies provisions in separate sections of the act relating to custody of persons pending hearings before a mental health board. Current law requires counties to contract with “appropriate medical facilities” either within or outside the county for such custody, and that such person may not be placed in a jail. The amendment requires each county to “make arrangements” with such facilities and to pay the cost of emergency protective custody of persons from such county in such facilities (pages 10, 15, and 21).
5. It provides contents of certificates filed by law enforcement officers who initiate emergency protective custody of persons, and petitions filed by county attorneys to initiate hearings before a mental health board (pages 12 – 14).
6. It clarifies the state burden of proof in mental health board proceedings, and disposition of cases heard by a mental health board (page 18).
7. It requires that all mental health board inpatient commitments be made to the Department of Health and Human Services for placement in an appropriate inpatient treatment facility, and harmonizes other sections (pages 19, 22, 38, 41, 51, 82, and 83).
8. It amends and clarifies provisions relating to refusal of treatment medication (page 52).
9. It provides access to records of a subject of a mental health board petition to “agents or employees of the Department of Health and Human Services Regulation and Licensure upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department” and “the Nebraska State Patrol or the Department of Health and Human Services pursuant to section 69-2409.01” (page 55).

